

Long-Term Care Survey Alert

Tool: Reporting Suspected Crimes -- Here's What CMS Says to Do

Revised survey memo addresses reporting requirements related to residents with dementia.

Check out the following Q&As excerpted from a revised survey & cert memo on "Reporting Reasonable Suspicion of a Crime in a Long-Term Care Facility - Section 1150B of the Social Security Act."

Question: "**All reasonable suspicions of a crime have to be reported to the State Survey Agency. Is there a specific form? What number should we call?**"

Answer: "No, the statute does not require the use of a specific form for reporting suspicions of a crime. Reporting may be done by telephone, electronic mail, fax or other means within the specified timeframes of the law. States may choose to adopt use of a specific form. Unless otherwise specified, the State Survey Agency contact number is the same number that you use to report complaints against a facility to the Survey Agency. It is important to keep in mind that the time frames for reporting the suspicion of a crime are different and more stringent than time frames related to reporting an incident under CMS regulations."

Question: "Does Section 1105B cover only those who have first-hand knowledge of the suspicion of a crime?"

Answer: "The law does not specify first-hand knowledge. The law states that each covered individual must report any reasonable suspicion of a crime against a resident of a long term care facility. However, if during the course of an investigation of a complaint or incident there is evidence gathered from individuals with first-hand knowledge of the suspicion of the crime, this additional information may be considered under section 1150B, even if those individuals did not file a separate report."

Question: "When a skilled nursing facility has a case of abuse, we submit a 24-hour report and then a 5-day report specific to abuse reporting. Do we also need to report this to the Secretary and local law enforcement?"

Answer: "Reports of suspicions of crimes committed against a resident must be submitted to at least one law enforcement agency of jurisdiction and the State Survey Agency (in fulfillment of the statutory directive to report to the Secretary). If there is reasonable suspicion that a crime has occurred (crime being defined by laws of the applicable political subdivision where the facility is located), then in addition to reporting the allegation of abuse to the State Survey Agency, the individual must also report this to local law enforcement."

Question: "Section 1150B specifies reporting time frames of 2 hours or 24 hours when there is a reasonable suspicion of a crime; is this business hours? For example, if the suspicion occurs on a Saturday, must it be reported then, or can it wait until Monday?"

Answer: "No. Reporting requirements are based on real (clock) time, not business hours. Section 1150B(b)(2) provides that if the events that cause the suspicion result in serious bodily injury, the individual must report this immediately (but not later than 2 hours after forming the suspicion); otherwise, the individual must report the suspicion not later than 24 hours after forming the suspicion. State Survey Agencies should have a reporting mechanism available 24/7 (e.g., hotline, answering machine that may receive a message, live person, fax, etc.). For example, if a reasonable suspicion of a crime that results in serious bodily harm occurs on a Saturday, the timing obligation for reporting this would be satisfied if the individual who formed the suspicion both left a message on the State Survey Agency answering machine and notified local law enforcement on that same day within two hours of forming the suspicion."

Question: "Is it safe to assume that falls that result in a hospitalization, unless directly related to a witnessed act of abuse, do not have to be reported to law enforcement?"

Answer: "A fall resulting in a hospitalization of a resident would generally be reported to the State Survey Agency under current incident reporting guidelines and State licensure regulations. A fall would only have to be reported to law enforcement (as well as the State Survey Agency under section 1150B) if there was a reasonable suspicion of a crime related to that event or incident."

Question: "**Does section 1150B require reporting of acts committed by a resident of a nursing facility that has dementia? We often have resident to resident altercations on our Alzheimer's Unit that could constitute assault. Would we now need to report assault by a resident with dementia to local law enforcement?**"

Answer: "This will be case specific and should be addressed through discussions among facilities, State Survey Agencies and local law enforcement. Crime is

defined by the law of the applicable political subdivision. Not every resident to resident altercation will be appropriate to report to local law enforcement; however, some cases may be reportable. CMS expects long term care facilities to take any necessary action to prevent resident-to-resident altercations to every extent possible."

Question: "Does an unusual bruise require reporting to law enforcement?"

Answer: "Not necessarily. Each event or suspicion will be case specific. A bruise or injury of unknown source should be reported to the State Survey Agency through the usual incident reporting processes. However, if there is a reasonable suspicion that the injury is the result of a crime, it should be reported to law enforcement as well."

Question: "**Can facilities be held liable in a civil or criminal case if a covered individual does not report suspicion of a crime?**"

Answer: "This is a question for the courts, not one that CMS can answer. It is beyond the scope of the Act."

The above Q&As have been printed verbatim from the survey & cert memo. You can read the rest of the Q&As at www.cms.gov/Surveycertificationgeninfo/downloads/SCLetter11_30.pdf.